

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DAVID KALINA,

Plaintiff,

ORDER

v.

17-cv-222-wmc

ANDREW SAUL,  
Commissioner of Social Security,

Defendant.

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On October 4, 2017, the court issued an order and judgment remanding this case to the commissioner for further proceedings under sentence four of 42 U.S.C. § 405(g) pursuant to stipulation of the parties. Now before the court is plaintiff David Kalina's attorney's petition for fees pursuant to § 406(b)(1) in the amount of \$18,493.75. (Dkt. #20.) Defendant does not object to this motion. (Dkt. #21.)

**Fees under 42 U.S.C. § 406**

As part of its judgment, a court may allow "a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits" awarded to the claimant. § 406(b)(1)(A). The fee is payable "out of, and not in addition to, the amount of [the] past-due benefits." *Id.* Counsel asks the court to approve an attorney fee award in the amount of \$18,493.75, which represents 25 percent of the amount awarded to plaintiff in past-due benefits.<sup>1</sup> Having considered the supporting materials filed by plaintiff's attorney, and hearing no objection from plaintiff or defendant, the court will grant the motion. The fees requested

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<sup>1</sup> The court notes that 25 percent of \$97,975 is \$24,493.75; however, other counsel submitted an administrative fee petition in the amount of \$6,000.00.

by counsel are reasonable in light of the time he spent on this case and the favorable result he obtained for plaintiff while working on a contingency basis.

Of course, counsel is not allowed to recover awards under both the EIJA and § 406(b)(1).<sup>2</sup> Section 406(b) has been harmonized with the EAJA; though fee awards may be made under both the EAJA and § 406(b), a claimant's attorney must refund to the claimant the amount of the smaller fee. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (explaining that “an EAJA award offsets an award under Section 406(b)”).

#### ORDER

IT IS ORDERED that counsel’s motion for reasonable attorney fees under 42 U.S.C. § 406(b)(1) in the amount of \$18,493.75 (dkt. #20) is GRANTED.

Entered this 19th day of May, 2020.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge

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<sup>2</sup> The court notes that counsel was previously awarded EAJA fees in the amount of \$7,500.00. (Dkt. #17.)